



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

HD:hd
Docket No: 07751-98
7 September 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: LCDR [REDACTED], USN [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 27 Oct 98 w/attachments
(2) PERS-311 memo dtd 15 Jul 99
(3) PERS-85 memo dtd 2 Aug 99
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected by removing the fitness report for 31 October 1995 to 26 September 1996, a copy of which is at Tab A. He further requested removing his failure of selection by the Fiscal Year 00 Commander Line Selection Board, so as to be considered by the selection board next convened to consider officers of his category for promotion to commander as an officer who has not failed of selection for promotion to that grade.

2. The Board, consisting of Messrs. Caron, Hogue and Neuschafer, reviewed Petitioner's allegations of error and injustice on 2 September 1999, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. In correspondence at enclosures (2) and (3), the Navy Personnel Command offices having cognizance over fitness report matters and active duty promotions have commented to the effect that Petitioner's requests have merit and warrant favorable action.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (2) and (3), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing therefrom the following fitness report and related material:

| Date of Report | Reporting Senior | Period From | of Report To |
|----------------|-----------------------------|----------------|--------------------|
| 96Sep25 | XXXXXXXXXXXX USN | 95Oct31 | 96Sep26 |

b. That there be inserted in Petitioner's naval record a memorandum in place of the removed report containing appropriate identifying data concerning the report; that the memorandum state that the report has been removed by order of the Secretary of the Navy in accordance with the provisions of federal law and may not be made available to selection boards and other reviewing authorities; and that such boards may not conjecture or draw any inference as to the nature of the report.



c. That Petitioner's record be corrected so that he will be considered by the earliest possible selection board convened to consider officers of his category for promotion to commander as an officer who has not failed of selection for promotion to that grade.

d. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

e. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


Executive Director



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1610
 PERS-311
 15 July 1999

**MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
 NAVAL RECORDS**

Via: PERS/BCNR Coordinator (PERS-00XCB)

Subj: LCDR [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual
 (b) ALNAV 048/99

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his fitness report for the period 31 October 1995 to 26 September 1996 and personal statement.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the report in question to be on file. It is signed by the member acknowledging the contents of the report and his rights to submit a statement. The member indicated his desire to make a statement. The member's statement and first endorsement are reflected in the member's record.

b. The member requests the removal of his fitness report the period 31 October 1995 to 26 September 1996 because it did not reflect his performance for the period in question. The report is an adverse report prepared upon the detachment of the reporting senior. The fitness report raises questions and could be viewed as retribution. The supporting documentation clearly supports Lieutenant Commander [REDACTED] claim that the fitness report does not reflect his actual performance for that period.

c. The member proves the report to be unjust or in error.

3. We recommend removal of the fitness report, statement, and first endorsement.

4. Reference (b) indicated that Lieutenant Commander [REDACTED] failed to select to O5 off the FY-00 Active Commander Line Selection Board. Although the member did not request removal of his fail to select due to his petition being drafted prior to the FY-00 Active Commander Line Selection Board, we recommend the member's petition be forwarded to the Director, Active Officer Promotions, Appointments and Enlisted Advancement (PERS-85) for

consideration of removal of the member's fail to select and the possibility of convening a special selection board.



Head, Performance
Evaluation Branch

**DEPARTMENT OF THE NAVY****NAVY PERSONNEL COMMAND****5720 INTEGRITY DRIVE****MILLINGTON TN 38055-0000**

5420

Ser 85/153

2 Aug 99

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: LCDR [REDACTED], USN [REDACTED]

Ref: (a) NPC-311 memo 1610 of 15 Jul 99

Encl: (1) BCNR File

1. Enclosure (1) is returned, recommending removal of LCDR [REDACTED]'s failure of selection resulting from the FY-00 Active Commander Line Promotion Selection Board.

2. Based on the modification of [REDACTED] record addressed in reference (a), the overall quality and competitiveness of his record significantly improves amongst his peers. Therefore, recommend approval of failure of selection removal allowing his record to go before the next scheduled regular board as an in-zone eligible officer not previously considered for promotion.

[REDACTED]
BCNR Liaison, Officer Promotions and
Enlisted Advancements Division